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Placebo scrutiny? Far-right extremism and intelligence accountability in Germany

***Abstract:** The post-9/11 era has seen a proliferation of special, or one-off parliamentary inquiries into intelligence. This article examines the question of what quality such inquiries can achieve, exploring the scandal surrounding the case of the German far-right terrorist group National Socialist Underground (NSU). The article introduces a theoretical framework, with remit, rigor and reception as the key pillars of analysis. While special inquiries are often seen as a way of overcoming imperfections of the traditional accountability system, they can also create a placebo effect – an illusion of accountability which allows intelligence services to go uncontrolled under a blanket of democracy.*

Western practices of intelligence challenge existing structures of accountability.¹ Public trust into institutions is considered a necessary precondition for democratic rule. Yet, intelligence techniques such as mass surveillance and extraordinary renditions continue to stir up debates about the scope and limits of current security policies, and intelligence conduct in particular. As a consequence, there has been a proliferation of scrutiny attempts with respect to intelligence conduct in democratic states.² Parliamentary scrutiny of the security sector is now widely understood to be a necessary requirement of a democratic system, ideally achieving an acceptable trade-off between requirements of openness and the prioritization of secrecy within the intelligence realm. Yet, what level of quality do current accountability systems actually achieve?

This article focuses on investigations concerning ‘one of the worst crime rampages in postwar German history’.³ Between 2000 and 2007, the far-right extremist cell National Socialist Underground (*Nationalsozialistischer Untergrund*, NSU) killed nine immigrants and a German police officer. The group of three also conducted a number of bombings with casualties as well as bank robberies across the country for more than a decade. Yet the extent of the NSU’s activities became evident only in November 2011. The fact that NSU members could stay undercover for about thirteen years and go about their lethal activities undetected by the

security authorities was described as a 'disgrace' by Chancellor Angela Merkel.⁴ The Federal Prosecutor even compared the NSU killings and their effect on German society to the impact that 9/11 had on the United States.⁵

The questions of why intelligence and police services failed to establish the far-right motivation behind the murders; how they could not recognize the pattern linking the individual crimes; and why they did not disrupt the group's activities, have been at the heart of several parliamentary inquiries. This article will draw on the four earliest inquiries to address the question of what constitutes a successful parliamentary inquiry into the realm of intelligence. It is unusual to have several investigative bodies examining a certain matter of national security, and the published evidence is unusually insightful. Additional materials, such as policy documents and media reports, were also consulted. Interviews were conducted with a number of individuals involved in either overseeing Germany's intelligence services or in committee work of NSU inquiries, primarily at the federal level. They provided background material but also, in particular, useful reflections on the impact and meaning of their work. The aim is to expand the, so far, minuscule academic work on criteria for success in parliamentary special investigations. Wright persuasively claims: '(s)pecial inquiries into intelligence operations ... are an emerging phenomenon. They have therefore not been the subject of much literature, and there are no universally agreed objectives or functions against which to evaluate them.'⁶ This article will put forward a set of criteria for assessing the quality of accountability work. Inquiries are costly and time-consuming, and an ineffective accountability system is therefore detrimental to the democratic process. There is, moreover, a risk that a proliferation of inquiries can act as placebo scrutiny, thus giving the impression of scrutiny while in reality preventing meaningful accountability.

The article is structured as follows: Building upon the existing literature on intelligence accountability, the first section outlines a framework for judging the quality of parliamentary investigations into intelligence. The second section provides the context of the German intelligence system and introduces the NSU case. Thereafter, the paper examines the performance of four inquiries into the NSU, at both the federal and state (*Länder*) level. Can the accountability efforts in this case be considered successful, or should they be understood as a form of placebo scrutiny?

Assessing the work of special parliamentary inquiries into intelligence

By now, 'a focus on oversight and accountability has developed as a central element of academic Intelligence Studies'.⁷ Accountability is understood as an essential part of contemporary intelligence work in democracies – the intelligence services had to come 'in from the cold'.⁸ Despite being normatively driven, the literature on intelligence accountability is under-theorized.⁹ Usually exploring empirical examples, a small strand studies topical aspects of accountability, including media-intelligence relations and challenges posed by private intelligence providers.¹⁰ By far the most substantial part of the literature focuses on country case studies, often with a focus on ordinary parliamentary work, thus oversight committees and plenary debates.¹¹ The post-9/11 era calls for a deeper exploration of accountability measures, as controversial forms of intelligence gathering, including torture and mass surveillance, have been posing serious challenges to standing parliamentary oversight committees.¹² As Aldrich and Richterova recently concluded: 'European national accountability bodies...have performed poorly over the last decade.'¹³ It is therefore that the

work of special commissions is particularly interesting to study as they can be understood as one way of overcoming imperfections of standing intelligence accountability systems.

A systematic account of the work of special commissions is still missing. So far, intelligence inquiries have been largely studied as individual cases, if at all.¹⁴ Aldrich's article about four UK-based inquiries into Iraq and Gill's work on inquiries with respect to security aspects of Northern Ireland's "Troubles" demonstrate the advantages of being able to examine inquiries on an overall theme (if not the same topic) to ensure analytical consistency.¹⁵ Both authors analyze inquiries on a range of legal footings, however, including executive investigations and reporting through permanent oversight bodies. The best attempt at a comparative account of special commissions has been made by Farson and Phythian.¹⁶ Their edited volume draws insights on an international level and provides the broadest study of special commissions so far. Yet, their focus is rather on commissions of national security set up by the *executive*.

The relative neglect of special inquiries in the existing literature is particularly surprising as intelligence-focused inquiries 'have increased in number and geographical distribution in recent years'.¹⁷ Most Western parliaments can set up a special commission of inquiry to investigate intelligence work.¹⁸ Lustgarten and Leigh argue that such ad hoc inquiries are particularly relevant in two cases. Firstly, they are being initiated when scandals are particularly complex and require 'an exceptional response outside a framework of scrutiny set up to shadow the work of particular agencies'.¹⁹ And secondly, they are understood to be an appropriate tool in cases where 'the failure of the regular means of oversight may itself be part of what is to be investigated in any future *cause célèbre*'.²⁰ In the context of the NSU terrorist activities, a mixture of both explanations can be established as will become evident below.

In order to make any claims about the quality of an inquiry's performance, it is necessary to distinguish between oversight *capacity* – understood here to refer to means, expertise, and political willingness – and oversight *effectiveness* – which relates to rigor, efficiency, and impact.²¹ Any analytical framework needs to take both aspects into account. How can we generate criteria for assessment though? Farson and Phythian suggest to focus the analysis on 'five separate stages of the inquiry process': the circumstances regarding the creation of the commission; the process and politics of the investigation; how the inquiry arrived at its conclusion(s); the political consequences and impact; and the purpose of the commission.²² Such features are helpful guidelines, yet those referring to the procedural aspects are too generic for a rigorous evaluation of the quality of parliamentary commissions' work. In some respect, existing work on continuous parliamentary oversight provides a more detailed set of criteria. Comparing oversight committees in eight countries, Born et.al. find that useful criteria for the analysis include: the mandate of the oversight body; budget control powers; type/membership of oversight body; subpoena powers; and prior notification requests.²³ Overall, they identify five criteria for strong oversight: independence from the executive; powerful investigative capacity; access to classified information; the ability to maintain secrecy; and adequate support staff.²⁴ These criteria are useful to establish the scope and investigatory powers of accountability holders, and they are applicable to one-off commissions as well.

It appears, however, that the existing literature has focused upon questions of technocratic efficiency maximization. In an age of a crisis of confidence in democratic institutions, however, the performative characteristics of accountability played out in the public realm are also an urgent concern.²⁵ How, and by whom, accountability results are perceived, welcomed or rejected, is significant when assessing the overall quality. Farson and Phythian rightly

include the dimension of consequences and impact in their guidelines.²⁶ Special inquiries are uniquely positioned in this context as their work is more transparent by design (standing intelligence oversight committees normally meet in private, do not often directly report to the public, and their members are normally sworn to secrecy). Beyond their formal purpose of ensuring the effectiveness of intelligence, the additional desired effect of one-off inquiries is a performative one. They can publicly proclaim what is, and what is not acceptable. Though the reception is, to some extent, out of the hands of the accountability holders, their impact and relevance is obviously higher in a situation in which their findings and policy recommendations are being taken on board than when their work is being rejected or barely discussed. This way, public trust is more likely to be maintained or restored.

Based on the discussion above, this paper proposes a framework for analyzing special parliamentary committees on intelligence, comprising the following three core criteria: remit; rigor; and reception.

Remit	Rigor	Reception
Mandate	Investigative capacity	Output
Expertise	Access	Perception
Independence	Political will	Implementation

Table 1: Three criteria for assessing the work of special intelligence commissions

Firstly, the *remit* of an investigation relates to the direction, feasibility, and depth of the committee's work. How broad, or narrow, is the remit? Has the inquiry asked the right questions? Do committee members have the knowledge or experience to investigate the matter? Secondly, the quality of an investigation is determined by the *rigor* of the committee and its work methods. Does the committee have sufficient means and investigatory powers to examine the issue in question? Are the members sufficiently rigorous in their work, and why (not)? Is there sufficient (political/individual) willingness to explore the matter? To what extent does the executive, or subject in question, cooperate with, or resist the committee? And thirdly, the criteria of *reception* refers to the question of which audiences were addressed by the committee. If addressing executive authorities, what determines a committee's ability to have its recommendations implemented? If addressing the wider public, or certain groups of victims, how is the committee's work perceived by those groups once concluded?

Table 1 shows the factors determining success or failure of special parliamentary inquiries. The precise admixture of remit, rigor and reception will determine the result. How the constellation varied among the inquiries concerned with the NSU scandal will be explored in the remainder of the article, after a brief introduction of the specific context.

The NSU under the radar of Germany's security authorities

The German intelligence system is split between the federal and the state level. At the federal level, there are three intelligence agencies - the Federal Office for the Protection of the Constitution (*Bundesamt für Verfassungsschutz*, BfV) is Germany's domestic security agency; the Federal Intelligence Service (*Bundesnachrichtendienst*, BND) is responsible for foreign intelligence; and the Military Counter-Intelligence Service (*Militärischer Abschirmdienst*,

MAD) constitutes a part of the Federal Armed Forces. While the BND and the MAD have no equivalents at the state level, the BfV has offshoots in each state. Eight states each have a State Office for the Protection of the Constitution (*Landesamt für Verfassungsschutz, LfV*) whereas the other eight states maintain a relevant unit within their respective Ministry of the Interior.²⁷ The state offices are independent institutions; the BfV is not authorized to instruct them.

Legislative oversight of the federal intelligence services is primarily conducted through the Parliamentary Control Panel (*Parlamentarisches Kontrollgremium, PKGr*) of the German Bundestag.²⁸ A preliminary form of this parliamentary committee was established in 1956, though it was only put on a legal footing in 1978.²⁹ In the current legislative period, the PKGr comprises of nine members, representing all political factions of the Bundestag and elected by majority vote. The PKGr's mandate calls not only for scrutinizing the performance of the intelligence services, but also that of the federal government with regard to its governing and use of the intelligence services. Further parliamentary oversight is conducted through the independent G 10 Commission (*G-10 Kommission*). It examines the interference of intelligence agencies with the privacy of correspondence, posts and telecommunications, a right outlined in Article 10 of the German Basic Law. In addition, the Bundestag's Trust Commission (*Vertrauensgremium*) is responsible for the budget of the intelligence services. The LfVs are scrutinized by committees of the respective state parliaments, such as the Parliamentary Control Committee (*Parlamentarische Kontrollkommission, PKK*) in Saxony. The precise oversight arrangements vary.

The revelations of 4th November, 2011 shook the system as a whole when the wider public learnt about the existence of the NSU for the first time. On that day, the two male members

of the group - Uwe Böhnhardt and Uwe Mundlos - were found dead in a trailer. The police found a Ceska 83 at the scene, and the pistol was quickly identified as the murder weapon in a number of, until then, unsolved cases. Enver Simsek, who owned a flower shop in Nuremberg, Bavaria, was the first victim of what became known as the NSU's Ceska series. Böhnhardt and Mundlos shot him in his shop on 9 September, 2000. Within the next seven years, the NSU killed nine businessmen with a migration background; and one police officer. Inquiries into the NSU killing series have established that, at least in most cases, the group chose their victims deliberately and prepared each murder carefully, using an address databank, city maps, and similar material.³⁰ Evidence found in the trailer as well as in the flat of Beate Zschäpe, the third member of the NSU, revealed a xenophobic and far-right background. 'This is our 11th of September'.³¹ The dramatic words of former MP Wolfgang Wieland suggest the shock many people felt when learning about the NSU's actions. Over a period of thirteen years, the NSU managed to stay undercover and commit numerous crimes. How was this possible?

Far-right extremism has been a long-standing concern in Germany, especially due to its history of the Third Reich. Yet German authorities continue to struggle with the phenomenon. As Jaschke maintains, in the post-war period, 'German politics denied the existence of a xenophobic far-right movement for many years in order to be accepted by the international community.'³² Yet, most recent numbers by the BfV suggest that, today, about 23,000 individuals in Germany are connected with the far-right scene.³³ These individuals do 'not believe in a pluralist society, democracy, and individual human rights'.³⁴ The creation of the *Alternative für Deutschland* (Alternative for Germany) party in April 2013 and its remarkable success in a number of elections over the last few years has caused new concerns about the 'normalization' of right-wing attitudes in German society. While some members of the

Eurosceptic and xenophobic party are outspoken far-right extremists, the party is currently not categorized as 'extremist' (and therefore is not monitored) by the BfV.³⁵

The responsibility to tackle the 'complex internal security issue'³⁶ of far-right extremism is split among the domestic security services – the BfV and its state counterparts – and the police. The BfV has engaged with right-wing extremism since its creation in 1950.³⁷ The BND and the MAD are sometimes involved, too. Yet, since the NSU's activities became publicly known, several observers have criticized the fact that the security services have failed to pay sufficient attention to far-right extremism and violence over the last decades.³⁸ A 2004 special report by the BfV strikingly concluded: 'Right now, there are no recognizable far-right terrorist organizations or structures' in Germany.³⁹ And in 2012, Jörg Ziercke, then Director of the Federal Crime Agency (BKA) admitted that, at the beginning of the 1990s, when various vicious attacks against shelters for refugees and asylum-seekers were conducted across Germany, much more could have been done to concisely fight violent far-right extremism.⁴⁰ So, the question of the extent to which security institutions possibly ignored, or failed to sense, right-wing activities became one of the core issues of investigations.

The mosaïc of NSU investigations

The extent of the NSU's crimes, and the public outcry about the fact that the group had been undisturbed by security authorities for such a long time, led to an unprecedented number of parliamentary investigations (see Tables 2 and 3). One can distinguish the twelve distinct inquiries by two waves. The first set of inquiries were created in the immediate aftermath of the first revelations about the NSU in November 2011. While the Bundestag inquiry focused on a holistic, Germany-wide approach to the issue, the other three inquiries were initiated in

those states with arguably the strongest links to the NSU scandal: Thuringia – where the NSU members were embedded and radicalized in far-right movements; Saxony – where the trio lived undercover for over a decade; and Bavaria – where five of the ten murders took place. The second, partly ongoing wave includes investigations which have been set up since 2014 in order to answer open questions, or to follow up on issues arising from the first set of inquiries or newly revealed material.

State/Federal	Initiation date	Publication of final report
Landtag Thuringia, First Commission of Inquiry of the 5 th Legislative Period ('Right-wing terrorism and agency performance') [Thuringia UA]	26/1/2012	16/7/2014
Deutscher Bundestag, Second Commission of Inquiry of the 17 th Legislative Period ('Terror group National Socialist Underground') [Bundestag UA]	27/1/ 2012	22/8/2013
Landtag Saxony, Third Commission of Inquiry of the 5th Legislative Period ('Networks of neonazis in Saxony') [Saxony UA]	17/4/2012	27/6/2014
Landtag Bavaria, Commission of Inquiry ('Far-right terrorism in Bavaria - NSU 2012-2013') [Bavaria UA]	4/7/2012	10/7/2013

Table 2: First wave of parliamentary inquiries into NSU-related issues

State/Federal	Initiation date	Publication of final report
Landtag Hesse, Second Commission of Inquiry of the 19th Legislative Period ('NSU')	22/5/2014	<i>Report pending</i>
Landtag North-Rhine Westphalia, Third Special Commission of Inquiry of the 16th Legislative Period ('NSU-Terror in North Rhine-Westphalia),	4/11/2014	31/3/2017
Landtag Baden-Wurtemberg, First Commission of Inquiry of the 15th Legislative Period ('Far-right terrorism / NSU Baden-Wurtemberg')	5/11/2014	15/1/2016
Landtag Thuringia, First Commission of Inquiry of the 6th Legislative Period ('Right-wing terrorism and agency performance II')	27/2/2015	<i>Ongoing investigation</i>
Landtag Saxony, First Commission of Inquiry of the 6th Legislative Period ('Networks of neonazis in Saxony II')	27/4/2015	<i>Ongoing investigation</i>
German Bundestag, Third Commission of Inquiry of the 18 th Legislative Period ('Terror group National Socialist Underground' II)	11/11/2015	23/6/2017

Landtag Brandenburg, First Commission of Inquiry of the 6th Legislative Period ('Organised far-right violence and agency performance, especially concerning the National Socialist Underground')	29/4/2016	<i>Ongoing investigation</i>
Landtag Baden-Wurtemberg, First Commission of Inquiry of the 16th Legislative Period ('The NSU's support network and investigations into the attack on police officers M. K. and M. A. ('Far-right extremism / NSU Baden-Wurtemberg II')	20/7/2016	<i>Ongoing investigation</i>

Table 3: Second wave of parliamentary inquiries into NSU-related issues

While these investigations, ultimately, all ask the question of why the NSU's activities had not been interrupted earlier, their precise mandates vary. To keep the analysis coherent, and the material manageable for a paper of this length, the remaining article will focus on the initial NSU inquiries, hence those of the first wave. It will assess the investigations by drawing on remit, rigor and reception as the three pillars of the framework established above.

Remit

Special inquiries into intelligence have a complex task at their hand. Wright suggests that ad hoc inquiries in this subject area

generally seek to: establish what happened, learn lessons and prescribe ameliorative action to prevent recurrence, provide a forum for the expression and relief of suffering and anger, hold individuals and institutions accountable (though not make findings of civil or criminal liability) and provide public reassurance and restore public confidence.⁴¹

As will become evident below, all inquiries under review in this article tried indeed to address *all* of those issues, though they gave varied weight to the different strands of inquiry.

Mandate

At the federal level, all parties represented in the Bundestag agreed on the necessity to investigate the NSU scandal once first details became known in late 2011. While some would have preferred to leave the investigation to the standing PKGr, supported by a special investigator, others suggested the creation of a governmental expert commission, staffed by federal and state officials, to identify weaknesses in the existing security infrastructure. As a compromise, the Bundestag plenum agreed in mid-January 2012 to set up the executive Bund-Länder-Kommission Far-Right Extremism (*Bund-Länder-Kommission Rechtsterrorismus*) *alongside* a special parliamentary inquiry commission titled Terror Group National Socialist Underground (2. *Untersuchungsausschuss: Terrorgruppe nationalsozialistischer Untergrund*; hereafter called Bundestag UA).⁴² The parliamentary commission commenced its work on 27 January, 2012 and released its report on 22 August, 2013. Its mandate was extensive. In addition to gathering a thorough understanding of the NSU and its environment, the commission was tasked to investigate questions, such as the following: What did German security authorities know about the ten murders? Did their erratic performance allow the NSU to continue their activities for such a long period of time? What was the role of paid

informants (*V-Personen*) working for police and intelligence? And what reforms would be necessary to improve Germany's fight against right-wing extremism?⁴³ The commission was to establish recommendations for improvement, especially with regard to a more effective tackling of far-right extremism.

In Thuringia, permanent parliamentary committees realized quickly that their investigations into the NSU-related events were undermined by a lack of cooperation by the authorities.⁴⁴ To enable a proper parliamentary review, the decision was made on 18 January 2012 to set up a one-off inquiry. An interim report was published in March 2013, followed by a final one on 16 July 2014.⁴⁵ The focus of the investigation was on three issues: mistakes by security and judicial authorities during the investigations; the development of far-right extremism in Thuringia; and the influence of security authorities on the neonazi scene.⁴⁶ While similarly broad in terms of themes when compared to the Bundestag UA, Thuringia's UA was naturally more restricted in terms of geography, exclusively focusing on events and institutions in its state.

Similarly, the inquiries in Saxony – with a strong focus on potential wrongdoing by the executive – and Bavaria – with the aim of exploring executive performance with regard to right-wing extremism more broadly and the investigations of the NSU's five murders in Bavaria in particular – focused on their respective state.⁴⁷ All state-based inquiries were to make recommendations for improvement and changes, like the Bundestag's one. Despite focusing on a lengthy period of time – 1994, when first links between the NSU and Bavarian neonazi groups became apparent, and July 2012, the month in which the inquiry was established, the Bavarian investigation was the shortest and most limited. The final report is

comparatively short, too. In contrast, the mandate of the Saxony UA was vast, comprising eight broad themes - of which three were not investigated at all in the end.⁴⁸

It is noteworthy that some state governments tried to avoid a parliamentary inquiry exploring links between the NSU and their state. In Hesse, for example, where Halit Yozgat was murdered by the NSU on 6 April 2006, the creation of a parliamentary inquiry was first delayed, and has subsequently been undermined by party rivalries to such an extent that the draft final report does not offer any joint conclusions or recommendations.⁴⁹

Composition and expertise

The inquiries' task was huge. They were given broad mandates. The public interest was enormous. And they had to examine two very secretive environments: the world of intelligence and police as well as the realm of far-right groupings. This raises the question of agency, or membership.⁵⁰ Yet what constitutes a 'good' scrutineer examining matters of intelligence is a question seldom asked. In order to explore intelligence issues efficiently and effectively, not only is political will required (see below), but it is arguably also helpful to have, at least a few members of the committee with a thorough understanding of the complex institutional set-up of national security structures, their legal framework and some knowledge of the secret world of agents and informers. The Bundestag's committee was composed of eleven members of parliament; all parties were represented. Two members of the committee – Clemens Binninger and Armin Schuster (who joined the committee only on 16 January 2013) – have a professional background in policing; seven other members have a legal background. Binninger also had extensive experience in investigating issues of intelligence. Together with Hartfrid Wolff, he was one of two committee members who was also serving on the standing

PKGr during the period of the special NSU inquiry. The majority of committee members had a long-standing interest in issues of internal security, and a few – such as Sebastian Edathy, Petra Pau and Sönke Rix – were previously concerned with far-right extremism.

While the Bundestag's committee brought together individuals with a sound mix of expertise and evident interest in the subject matters of intelligence, internal security and right-wing extremism, the composition of the NSU committees in Saxony, Thuringia and Bavaria was more diverse. The state committees also varied considerably in size: the biggest one was the Saxony UA with nineteen parliamentarians, and the smallest was the Bavaria UA, comprising only nine members.

To fill certain gaps of knowledge, and to gather a more independent picture, special commissions can ask for expert testimonies. Both the Bundestag UA and Thuringia's UA sought advice from a range of experts on issues including violent extremism, security architecture and culture and civil society efforts at victims' support.⁵¹ Saxony's UA limited the number of consulted experts to six; and Bavaria's UA questioned only three.⁵² Journalist Andrea Röpke acted as an expert witness in all inquiries.

One of the key tasks of all inquiries was to shed light on the performance of the security sector with respect to far-right extremism. Why had the NSU been able to work under the radar of security authorities for so long? Was it due to individual incompetence, or were there rather systemic flaws which could be identified? The way in which the investigations tackled the question reveals important aspects of how seriously the members took their mandate.

Performance of security authorities

Thuringia's intelligence and police performance was naturally a focus of the investigations, as it was the NSU's home state. The UAs of the Bundestag and Thuringia collected impressive evidence to show that, in the 1990s, the Thuringian authorities – still in the process of setting up their security and judicial apparatus from scratch after the German Democratic Republic ceased to exist – struggled considerably to tackle the vivid local right-wing scene. Bigger groups, such as the Thuringia Homeland Security (*Thüringer Heimatschutz*, THS), founded in 1996, had about 160 members at their peak.⁵³ There was both a lack of strategy and experience with respect to the tackling of right-wing extremism.

The collected evidence shows that the activities of the NSU could have been stopped at an early stage. On 26 January 1998, the police raided the properties of the three NSU members and found a bomb workstation in Zschäpe's garage. Yet to issue the warrants for the three individuals took such a long time, that they could escape and go undercover.⁵⁴ Moreover, in the garage, local police officers and two officials of the BKA subsequently found a list of the 'who is who' of Germany's right-wing scene, including postal addresses and telephone numbers. This was described as not relevant to the investigations and put aside. Thuringia's inquiry found that the list could have led the authorities to some of the trio's closest supporters.⁵⁵ But not only did the Thuringian authorities fail to stop the NSU activities at an early stage. The Bundestag UA found, for instance, that other security authorities had some useful information about the trio but did not share the information with their colleagues in Thuringia.⁵⁶

The two UAs provided staggering material concerning Helmut Roewer, then Director of Thuringia's TLfV. He personally created a front company called the Heron Publisher (*Heron-Verlag*) in October 1997, using the name of 'Stephan Seeberg, journalist'. Yet, the publishing

house's connection with the TLfV well known before the release of the first publication. It was therefore no longer of use to the intelligence agency.⁵⁷ It still continued to exist, however, and published a number of books, with some of its authors being easily linked to the TLfV. The purpose of the creation remains somewhat unclear.

The shortcomings and failure of the security authorities in Thuringia amounted to what can only be called a systemic failure. It appears that ministerial supervision had been rather lax in this state. Witness Bernd Hillmann, who was involved in the managerial supervision of the TLfV within Thuringia's Ministry of Interior, maintained that the TLfV was working autonomously and was kept on a 'relatively long leash', i.e. there was an exchange between the ministry and the TLfV once a month only.⁵⁸ A 2000 report looking into the status quo of the TLfV, produced by lawyer Karl-Heinz Gasser [Gasser Report] as a reaction to media allegations about chaos and mismanagement, suggested that supervision and oversight were basically non-existent for years.⁵⁹ Echoing the Gasser Report, Thuringia's Report draws the conclusion that the supervisory authorities in the Ministry of the Interior were little or not at all interested in exercising their control and guidance functions concerning the TLfV's performance and strategic direction.⁶⁰

Another factor considered by the inquiries was the degree of cooperation among security institutions. According to the Thuringia report, and based on the evidence of a number of witnesses, regular and intensive information exchange took place among police units, including the State Security units of the Criminal Police Departments and the TLKA. But there was also a lot of rivalry, especially between intelligence and police services – namely the TLKA and the TLfV, which negatively affected cooperation. A number of witnesses of the State Security units of Jena and Saalfeld as well as the TLKA argued that the TLfV was trying to

gather all information in a one-way fashion, i. e. the TLfV gathered information from the police and prosecution offices without delivering anything themselves. The TLfV's defence was allegedly on the basis of the protection of sources. However, the erratic information flow from the TLfV to the police led to several instances in which the police was surprised by events in the right-wing extremist scene and could not react swiftly or powerful enough.⁶¹ For example, in November 1999 the TLfV did not inform the police about a skinhead concert in Schorba, close to Jena. When the police arrived, they were unable to stop the thousand or so neonazis from destroying the pub where they had gathered.⁶²

While the Thuringian commission provided a rich analysis of the intelligence realm, the Bavarian UA produced a much weaker report. A lot of it is simply a summary of what individual witnesses said, rather than a critical examination of the gathered material. One example concerns a 2011 statement by the Bavarian LfV which suggested that the *Verfassungsschutz* had not been aware of a connection between the THS, the NSU and Bavarian neo-Nazis. This statement was sharply criticized by journalist Röpke, one of the expert witnesses. She suggested that either the LfV did not do their job properly or they were simply lying.⁶³ More generally, by comparison to the incomplete picture of the far-right scene drawn by Bavarian intelligence officials, the Bavarian UA was reportedly astonished about the detailed and informed picture the three invited academic experts were able to provide.⁶⁴

The conclusion in Thuringia's report could not have been clearer. The search for the NSU trio between 1998 and 2003 is described as a 'disaster.'⁶⁵ The failure to stop the NSU was neither down to bad luck or individual mistakes nor to organizational shortcomings (although there were plenty of them).⁶⁶ They found that the growing willingness to use violence within the militant wing of the far-right was 'massively underestimated' by the authorities.⁶⁷ In contrast

to the report of Thuringia's UA, the commissions in Saxony and Bavaria provided a rosier picture. The Bavarian Commission found shortcomings concerning the performance of the domestic intelligence services, the police and the judicial authorities. It also found deficits with respect to cooperation, but it did not conclude that there was a general collapse, or failure, of the system. Similarly, the factions of the then government parties in the Saxonian report concluded that members of state institutions were not to blame for the flawed investigations of the NSU trio as such a series of crimes had, so far, been 'unimaginable.'⁶⁸

Overall, the findings about the performance of security authorities suggest that the inquiry member of the Bundestag and in Thuringia gained a deeper and clearer understanding of the situation than the other two inquiry teams. They asked more probing questions and appeared to be better able to identify important connections between individual testimonies as well as between testimonies and related evidence. To what extent this also comes down to independence and political will, will be discussed in the following.

Independence

All four inquiries had a challenging task of exploring a complex socio-political issue, tracing the performance of security authorities for a lengthy period of time. There is no reason to suggest that the committees were not sufficiently independent from the officials and institutions subjected to their scrutiny in order to perform well. Set up as special parliamentary inquiries, the distance between the investigated executive institutions and the committee members was appropriate. Nevertheless, the discussion of rigour below, and political will in particular, suggests that the UAs of Bavaria and Saxony were the weakest investigatory bodies, also providing softer criticism of the executive than those in the

Bundestag and Thuringia. Especially concerning Saxony, this is certainly not due to the fact that there were no grounds for critique concerning the executive authorities. Opposition members rather suggested that the commission's composition affected the work. Eleven out of the 19 members of the UA came from the governmental coalition parties. This group allegedly considered the work of the UA to be unnecessary from the beginning and refused to put severe blame on their 'own' government.⁶⁹ Moreover, as all parties are to be included in a special commission, the far-right National Democratic Party of Germany (*Nationale Demokratische Partei Deutschlands*, NPD) also had a seat in the Saxony UA. This factor impeded collaboration with parliamentary counterparts elsewhere. Crucially, the Chairman of the Bundestag UA rejected any collaboration with its Saxonian counterparts due to the NDP's involvement.

Rigour

At the core of assessing the quality of a parliamentary commission's work scrutinising intelligence-related activities is the question of thoroughness and rigidity.

Investigative capacity

As special inquiries, the UAs had greater investigatory powers than the corresponding standing intelligence committees. Special inquiries focus solely on the topic outlined in their mandate; and they are, at least in principle, not restricted by time and resources in a way the permanent bodies are. The Special Commission Law (PUAG) gives the Bundestag UA the right to employ a special investigator and to refer issues to the relevant courts.⁷⁰ The special

inquiries' right of accessing documents and witnesses is also clearly regulated. In contrast to standing intelligence committees, the meetings of special inquiries at federal and state level are held in public, unless there are substantial reasons for a closed session. Their written reports are presented to parliament and subsequently publicly available.

Over a period of nineteen months, the Bundestag UA held seventy sessions and interviewed ninety-five witnesses and sixteen experts. The Bundestag made use of its right to involve a special investigator to facilitate and accelerate the access to material.⁷¹ In Thuringia, the UA met sixty-eight times between February 2012 and July 2014 and consulted an extensive list of experts and witnesses. In contrast, the Bavaria UA held only thirty-one meetings, questioned fifty-five witnesses and invited three experts.⁷² The commission in Saxony gathered thirty-six times over a period of twenty-six months and questioned thirty-four witnesses. Eighty-three further witnesses had been identified but were not interviewed in the end for 'a number of reasons'.⁷³

Access

All committees had to face serious obstacles to inquiry. The one singular challenge for investigators exploring events related to the security and, in particular, intelligence realm lies in the access to information. They rely to a considerable extent on official documents and communication records when attempting to trace activities and decision-making. One major hurdle for a detailed investigation of crucial aspects of authorities' conduct in the context of the NSU case was the destruction, or loss, of a considerable number of documents of security authorities. Right at the beginning of its inquiry, the Bundestag UA found that the BfV had shredded documents related to the surveillance of Thuringia's far-right scene. The

destruction took place on the 11th of November, 2011. The Bundestag UA investigated this aspect in depth as it was aware that those kind of actions would have a negative impact on public trust and feed conspiracy theories. The documents related to “Mission Rennsteig” (*Operation Rennsteig*), an information-gathering campaign run by the BfV between 1997 and 2003 and targeting Thuringia’s neonazi scene.⁷⁴ The campaign included the recruitment of informers (*V-Personen*). While a senior BfV official appears to have independently initiated the documents’ destruction, the Bundestag UA did not come to a satisfying explanation about “Mission Konfetti”, as the destruction of the documents was ironically dubbed.⁷⁵ The Federal Ministry of the Interior (BMI) found a way to reconstruct most of the documents.

The Bundestag UA sharply criticized the destruction of documents. Heinz Fromm, then Director of the BfV, had to appear before the UA – and due to his performance stepped down from his post shortly thereafter. Yet, the UA came across other incidences of document loss. The BMI admitted that it requested on 14 November 2011 the destruction of a set of documents concerning the electronic surveillance of members of the far-right scene. It argued that the destruction was done on a routine basis, referring to data protection rules. Not only is the timing suspicious though, but Germany’s Federal Data Protection Supervisor, Peter Schaar, also emphasized that the law did not require a destruction of files, simply a freeze.⁷⁶

“Mission Konfetti” was not the only incident of document loss. Several state institutions struggled with the provision of documentary access at some point during the investigations. In Saxony, then Director of the SLfV Reinhard Boos, had to step down from his post in July 2012 when a file containing phone surveillance protocols of 1998 with relevance to the NSU case suddenly re-appeared in his agency after it had been declared lost previously.

A further challenge for all inquiries was the fact that some witnesses of the executive suffered from remarkably poor memory. This became dramatically apparent during the efforts of the Thuringia UA to examine the work of the Special Commission on Right-wing Extremism (Soko REX) of Saxony's LKA in the 1990s. While a single former member of the Soko, KHM Mario Melzer, stood out, providing a detailed account of many aspects and events and being apparently critical and reflective of failures and shortcomings, most other witnesses could barely remember anything about their work in, or with the Soko. This includes a 37-year old female official who had been a team member of the Soko but found herself unable to even describe her work responsibilities at the time. Similarly, the then head of the Police Unit in the Ministry of the Interior, Michael Eggers, failed to make a detailed statement about the performance of the Soko REX.⁷⁷

It is troubling that a few senior officials even appear to have misled parliamentarians. A striking example concerns the statement before Thuringia's UA by Peter Nocken, then deputy head of the TLfV. He insisted that state authorities were 'blind' for some time concerning the activities of neonazi groups in Thuringia as the only reliable *V-Person* then was Tino Brandt, alias Otto.⁷⁸ Not only was Brandt the head of the THS though, but thanks to the work of the special commissions it is now known that, over time, there were up to 45 *V-Personen* from the group working for the security authorities.⁷⁹

Political will

In the section on investigative capacity above, it has already been indicated that the four special inquiries were composed and will-powered differently. Whereas the Bundestag and

the Thuringia UAs were based on a broad political consensus to shed light on the NSU and authorities' performance, the UAs in Saxony and Bavaria spoke much less with one voice.

The degree of political will is, to a considerable extent, mirrored in the way the investigations were conducted. Arguably the hardest test for political will are issue areas which are particularly controversial and where the commissions are likely to face resistance. The following section will focus on two of those issues: racism and the role of *V-Personen*.

Trivialisation of far-right extremism or institutional racism?

Each of the four investigations clearly revealed that state authorities underestimated the extent of activities of far-right, xenophobic groups in Germany and their willingness to use violence. In other words, right-wing extremism was trivialized.⁸⁰ Especially puzzling is the question of why the police units working on the separate NSU murder cases so quickly dismissed a xenophobic motif. While, for example, Bavaria's Minister of the Interior, Günther Beckstein, raised the question of a xenophobic motif immediately after the first NSU murder of florist Enver Simsek, the police investigators favored the hypothesis that Simsek was the victim of an unknown criminal organization which they thought acted from some kind of migrant milieu.⁸¹ In the following, the investigators of the other killings in the series followed similar investigative lines, respectively targeting a 'flower mafia', a 'kebab mafia', a human trafficking organization, the Kurdistan Workers' Party (PKK) or the Turkish Hezbollah.⁸² A right-wing motif was still dismissed even when community members turned to street protests after the killings in the cities of Kassel and Dortmund in April 2007. Their attempt to point towards a potential right-wing motif was barely picked up by the police or the media.⁸³

So where did this ignorance towards an extremist motif stem from? The inquiries of the Bundestag and Thuringia provided ample of evidence to demonstrate how Helmut Roewer, as President of the TLfV a central figure in the case, was clearly racially motivated. In January 1999, he maintained at a public event that one should attempt to 'understand' youngsters with right-wing leanings, as the Third Reich had no negative sides. The Thuringia report describes this event as 'shocking' and points out that such a misrepresentation of history cannot be brought in accordance with the values outlined in the Land's constitution.⁸⁴ Roewer also discredited anti-nazi work by political institutions on a few occasions.⁸⁵ According to one of the experts involved in the inquiry, Peter Reif-Spirek, Roewer's approach reflects the general attitude among the Thuringian political establishment in the 1990s which tended to play down right-wing extremism and failed to consider non-violent forms of xenophobia as a problem.⁸⁶

A related strand of investigations for all committees was the question to what extent security authorities were racially biased and possibly tolerated far-right activities. Again, the findings were particularly striking in the case of Thuringia. The parliamentarians found that right-wing violence among teenagers, for example, had been 'de-politicized and trivialized' by security and judicial authorities.⁸⁷ One example concerns the THS - a militant neonazi movement which was the breeding ground for the NSU. Before Thuringia's UA, the THS was described by experts and the police as a well organized, big, robust neonazi grouping. Yet in sharp contrast to those statements, Peter Nocken, deputy director of Thuringia's LfV, suggested that the THS was a loose conglomerate without members, membership cards or membership fees. Expert Matthias Quent emphasized that the LfV did not pick up the clandestine terrorist activities in the wider circles of the THS. Generally, Nocken left the impression to be poorly informed. For example, he estimated that the comradeships in Jena and Saalfeld-Rudolstadt would consist

of six or seven individuals – and seemed to be surprised that a 1997 report by his own institution suggested that the number concerning Saalfeld alone was approx. 120.⁸⁸ In contrast to that, Thuringia's LKA saw a serious threat from the right in the 1990s. Strikingly, the first President of Thuringia's LKA, Uwe Kranz, warned publicly in 1997 that the far-right movement was 'learning' from the terrorist activities of the far-left Red Army Faction since the 1970s.⁸⁹

But did the practice of trivializing amount to institutional racism within the security institutions? Sir William Macpherson, the inquiry judge of one of the most high-profile investigations into institutional racism in the UK, defined the term as the 'collective failure of an organization to provide an appropriate and professional service ... through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping which disadvantage minority ethnic people.'⁹⁰ The joint conclusion of the Bundestag UA avoided the phrase but maintained that the UA members found 'prejudices and entrenched thinking patterns' among the domestic intelligence agencies which negatively affected the recognition of neonazi terrorism threats.⁹¹ In an individual statement, the SPD faction emphasized the findings of structural cognitive biases. They identified 'routines tainted with prejudice' which meant a schematic categorization of delinquency with respect to groups, milieus and ethnicities.⁹² More explicitly, the UA members of the Die Linke concluded in a separate statement that the NSU police investigations were indeed underlined by institutional racism.⁹³ They suggested the evidence demonstrated a 'fatal combination of circumstances' by which processes of ethnicizing (with respect to the victims) and cognitive bias (concerning far-right extremism) negatively affected the work of police forces.⁹⁴

The Bavarian UA rejects the idea that it was 'day-to-day, latent' racism which prevented German authorities from investigating xenophobic, far-right motifs for the murders.⁹⁵ Saxony's report only mentions the word 'racism' twice in the whole text – not related to state authorities. Thuringia's UA finally briefly concludes that 'racism needs to be finally taken seriously as an urgent problem' and that this also needs to include racism engrained in some institutions.⁹⁶ Like in the case of the Bundestag UA, the faction of The Linke added their own conclusions which explicitly maintain that structural racism exists in some state institutions.⁹⁷ Overall, it is the Bundestag UA which most forcefully engaged with the question of structural racism. Even their report, however, avoids a deeper discussion of the issue and comes to an unsatisfying conclusion in this respect.

Handling of V-Personen

One of the most contested aspects of the NSU scandal concerns the use of *V-Personen* by police and intelligence services. Authorities justify the use of confidential human intelligence sources (CHIS) in monitoring and infiltrating the far-right scene by emphasizing its close-knit, secretive nature. *V-Personen* work under cover. The precise number of these sources used by German authorities is not known. The collected evidence presented in the four inquiries suggests that between 1992 and 2011 most neonazi groupings and parties in Germany were infiltrated to some extent.

Concerning Thuringia, the 2000 Gasser Report highlighted that, according to rules of the *Verfassungsschutz*, *V-Personen* 'must not be involved in the creation of extremist organization, illegal cadres in companies or the creation and leadership of left- or right-wing

terrorist groups'.⁹⁸ In direct contrast to these rules, the TLfV handled the source Dienel, code-named Küche.⁹⁹ Dienel was a senior member of the Thuringia branch of the NPD and the federal head of the German National Party (DNP) in 1995/96. He apparently approached the TLfV on 18 January 1996, and a first meeting took place five days later. Dienel was convicted a couple of times in the mid-1990s. The files Gasser was able to access suggest that the TLfV met up with Dienel 93 times and he received a total of DM 28,780. He was therefore not providing information on a one-off basis, but worked for the TLfV over a lengthy period of time as a paid *V-Person*.

The Thuringia UA found further worrying interactions between the domestic intelligence service and the neonazi scene. For example, the THS in 1996 – the habitat in which the NSU trio got radicalized – was decisively led by the TLfV's *V-Person* "Otto" (Tino Brandt).¹⁰⁰ Expert witness Hajo Funke put emphasis on Brandt acting as a 'double agent' and that he might even have been covered up by the TLfV.¹⁰¹ And Brandt was by far not the only *V-Person* active in the THS. Der Spiegel suggested in September 2012 that 35 to 45 members of the THS were actually informers or informants from the BfV and its counterparts at the Länder level as well as the MAD.¹⁰² Not only is this a very high number given the limited size of the THS, but the background of some of the *V-Personen* and the position some intelligence personnel took on in the group were in clear contrast to existing legal regulations. At least a few *V-Personen* were involved in criminal activities; and some became very senior members which meant they took on a steering role the group.

Indeed, throughout the investigations it appears that policy-makers and security authorities tried to reveal as little as possible about the extent of *V-Personen*. A striking example concerns the case of Thomas S. In the 1990s, Thomas S. was a well established figure in Saxony's

neonazi scene and close to the NSU members. The Federal Prosecution Office investigated his case and, in September 2012, informed the Bundestag UA that Berlin's LKA had been running S. as a *V-Person* from November 2000 until January 2011 (a fact never mentioned in the official statements or protocols of the Federal Prosecution Office). S. provided his handlers during five meetings between 2001 and 2005 with clues pointing towards the NSU members.¹⁰³ Up to today it is not clear what the LKA did with the information provided by S. The case is particularly sensitive as S. himself admitted to the BKA in 2012 that he provided the NSU member Uwe Mundlos with more than one kilogram of TNT explosives, probably at the end of 1996 or early 1997. Those explosives were the ones found in the garage in Jena which the NSU used as a bomb workshop. After the trio went undercover, S. helped them to find a hiding place.¹⁰⁴ The trio subsequently avoided further contact with him, probably appreciating that he would be a likely target of surveillance.

The Bundestag UA called on expert witnesses to provide testimony concerning *V-Personen*. From what the UA was able to reveal, they came to the conclusion that the *Verfassungsschutz* gained little from the relatively high number of informants in the far-right scene.¹⁰⁵ They were also puzzled why the BfV did not ask their *V-Personen* more directly and forcefully to provide information about the NSU trio. More generally, the UA found several 'problematic, partly unacceptable circumstances concerning the selection and handling of *V-Personen*'.¹⁰⁶

Thuringia's UA stated that they could not come to a conclusion concerning the work of *V-Personen* due to the lack of documentary evidence and questionable testimonies.¹⁰⁷ Saxony's UA flagged up the issue of *V-Personen* but did not provide meaningful insights. In a similar vein, Bavaria's UA quickly threw in the towel and maintained that 'the UA was not able, due to reasons of secrecy, to get a full picture of the practice of handling *V-Personen*'.¹⁰⁸

In conclusion, all inquiries failed to gain crucial insights into the existence and handling of *V-Personen*. It is therefore unsurprising that this issue has been taken up (again) by the NSU-related special inquiries of the second wave.

Reception

The third pillar of our analytical framework – reception – concerns the depth and width of political and social impact, maintained in the form of recommendations and reforms, and general reaction to the committees' work. Once the investigations into the NSU's murder series had started, policy-makers, scholars, journalists and even some practitioners called for a number of reforms of the security sector. Moreover, the inquiry commissions pointed to solutions by which the identified weaknesses and shortcomings within the police and intelligence services as well as the judicial authorities could be overcome. This section will succinctly examine the main outputs and reform suggestions and discuss their impact.

Outputs

Within a period of just over a year (Bavaria) to two and a half years (Thuringia), all inquiries were concluded. Especially the UAs of the Bundestag and Thuringia engaged with an enormous amount of material. Their final reports to their respective parliament are long (1798 pages concerning the Bundestag) and detailed. Those of the commissions in Bavaria and Saxony are more compact. The federal standing intelligence committee - the PKGr, and its state counterparts do not release topical reports to the wider public, so a special inquiry has the advantage of directly communicating the findings to the wider public.¹⁰⁹ In fact, two

interviewees emphasized that the final report itself was a positive contribution to greater transparency.¹¹⁰ The reports to parliament are easily accessible through parliamentary websites. Soon after their release, the reports were also discussed in a plenary session.

The reports provide a rich description and significant findings of events and circumstances leading to the NSU scandal as well as state behavior. The findings of the Bundestag's UA were extensive and addressed (though not necessarily answered) all the questions set out in the mandate. The Bundestag UA stated 'complete governmental failure' with respect to the BVerfS. Yet while some observers from outside the UAs found that the intelligence services had failed to such an extent that the only appropriate response would be to abolish them, or at least reduce their number, none of the commissions called for such drastic change.¹¹¹

Interviewed about their findings, members of the Bundestag UA suggested that it was important to them to overcome party friction and present a 'one-voice' report.¹¹² This was understood to be a signal to the wider public suggesting that all members were appalled by the findings and wanted to demonstrate solidarity with the victims and their families. Hence, although there are some additional comments at the end of the report by some of the involved parties in which they emphasize some of their impressions and identify particular areas in need of reform, the main report includes a great number of significant *joint* findings and recommendations. This is a fundamentally different approach to the Saxony UA which was deeply split about the investigative exercise from the beginning.

Just based on the Bundestag inquiry only, one interviewee suggested that there had never been such a 'deep reworking' of the work of intelligence services in Germany.¹¹³ What is maybe most remarkable, however, is the extraordinary opportunity for outsiders of the national security realm (i.e. journalists, academics and the public as a whole) to have access

to four reports in this first wave of NSU inquiries which, taken together, create a fascinating mosaic outlining the structures and personalities which define, in particular, the German *Verfassungsschutz* network.

In addition to the formal process of reporting and plenary debate, members of the UAs also explained their conclusions in media outlets.

Perception

The work and final report of the Bundestag inquiry was widely received in a positive light. Several interviewees agreed that all members of the inquiry committee demonstrated a high level of professionalism.¹¹⁴ That they generally achieved their aim of avoiding personal quarrels is reflected in the fact that all decisions were taken unanimously.

The families and communities of the victims constituted a particular group of recipients of the inquiry reports. In a special session in September 2013, the UA's findings were discussed in the Bundestag plenary and several family members were attending. The President of the Bundestag apologized to them in the name of parliament, emphasizing 'consternation and shame' about the failures of the investigations.¹¹⁵

The federal government openly admitted that the NSU scandal had caused 'insecurity and incomprehension' among the public concerning the failures of security authorities.¹¹⁶ The *Spiegel* called the UA's report a 'reckoning', appreciating the depth and scope of the UA's work.¹¹⁷ Wider social appreciation of the committee's work can be seen in the fact that its Chairman won the Genç Price for Hope and Reconciliation of the German-Turkish society in

June 2013. The price was given to Edathy for his commitment to the fight against right-wing extremism.

Bundestag UA members promised that the final report would encourage public debate, with the aim of ‘adamantly fighting every form of extremism and xenophobia in our country’.¹¹⁸ Inquiry member Clemens Binninger stated that the failure to stop the NSU was not only a failure of the security authorities, but also a failure ‘of the whole of society’. Apart from police, intelligence and justice authorities, politicians and the media would also have to ask why they never thought about right-wing extremists as potential offenders.¹¹⁹ The inquiries have certainly raised the awareness of the danger and extent of right-wing extremism in Germany. One interviewee described the work of the UA appropriately as an ‘awareness building’ exercise.¹²⁰

Two interviewees highlighted that the creation of the Bundestag UA should not be understood as a lack of faith in the PKGr, as the PKGr is not always able to prevent scandals.¹²¹ Interviewee C went further to explain that a one-off inquiry might be more suitable as an investigatory instrument at a certain moment in time. In their view, a major advantage of a special inquiry is that their members are not sworn to secrecy, in contrast to the PKGr, for example. Hence, the public inquiry is more transparent and can easily reach out to the wider public.

Taken together, the first wave of inquiries provided unprecedented insights into the extent of right-wing extremism in Germany on the one hand, and some crucial aspects of intelligence and police performance in dealing with the phenomenon. Their findings also left serious questions unanswered, however, and posed several new ones. As a consequence, a second set of inquiries – including more states as well as, again, the Bundestag – were called to

address those and other emerging issues. The inquiries focus on aspects such as the NSU's support network; the role of informers working for the intelligence services; extremist violence against the police; and communication failures within the intelligence community. Norbert Lammert, President of the Bundestag, has urged the political class to face up to this challenging topic. But political rivalries in the regional parliaments, such as those in Hesse, and the continued secrecy surrounding intelligence work, have hindered further progress.¹²²

Implementation

An early, major push for reforms of the security sector following the NSU-related revelations came from the executive *Bund-Länder-Kommission* which published their final report on 30 April 2013. The focus of the body's investigative work concerned the various forms of cooperation of state security authorities with each other, as well as with their federal counterparts. Finding severe problems of collaboration, substantial changes for the *Verfassungsschutz* network were initiated. Reform initiatives included a duty of information exchange among the *Verfassungsschutz* offices, both at federal and state level. The effectiveness of collaboration was to be increased by a central database on right-wing extremism.¹²³ Hosted by the BKA, the database is jointly used by the BKA, the BfV, the MAD and the Federal Police and, at the state level, the internal security agencies and criminal police units. Institutional change came with the opening of a Joint Extremism and Terrorism Defence Centre (*Gemeinsames Extremismus- und Terrorismusabwehrzentrum*, GETZ) on 15 November 2012, an information platform which fosters information exchange of security authorities on these issues, not limited to far-right extremism.¹²⁴

The recommendations by the Bundestag UA reinforced the emphasis on improved information and intelligence sharing with regard to crimes and events affecting more than one state.¹²⁵ In total, the Bundestag UA listed forty-seven recommendations in their report, concerning intelligence, police and law enforcement. Further recommendations were made concerning the promotion of democracy, focusing on efforts to tackle racism, xenophobia and far-right extremism.¹²⁶ With respect to the *Verfassungsschutz* network they called for 'greater sensibility' with regard to the threat which far-right extremism poses to the democratic state.¹²⁷ This would only be possible on the basis of a 'comprehensive change of mentality and a new self-conception of openness'.¹²⁸ To ensure better and more effective intelligence work, the UA called for a strengthening of the standing parliamentary control bodies.¹²⁹

The impact of these recommendations cannot be overstated. Crucially, in the 2013 coalition agreement the incoming government pledged to adopt all recommendations concerning the federal level and to implement them speedily.¹³⁰ From a symbolic point of view, this was a significant step by the government to emphasize their ongoing commitment to democratic values and their rejection of right-wing extremist thought. And a serious re-working of the executive has indeed been initiated.¹³¹ There is, however, no clear process by which the implementation of recommendations of special inquiries can be traced. While one interviewee suggested that there was some consideration of creating a commission which could monitor the implementation of reforms, such a body has not emerged. The federal government updated the Bundestag about the implementation of measures on an irregular basis, however.¹³² It is evident that the inquiry contributed to considerable institutional changes within Germany's intelligence system as well as – less tangible – strengthening initiatives to increase the awareness of cognitive biases, racist and xenophobic attitudes within security institutions and society as a whole.

Central to the recommendations of Thuringia's UA was the political demand that the state should finally take racism seriously as an urgent issue, and problematize it on all societal and political levels.¹³³ Additional resources would be necessary to strengthen efforts to tackle neonazism and racism. The UA suggested the creation of an inquiry body covering racism and discrimination, and such a commission was eventually set up in January 2017. Its first report is yet to be completed. With regard to the *Verfassungsschutz*, the UA recommendation only briefly states that all members see the need for institutional changes concerning the TLfV. They could not agree on any, however.¹³⁴

While the Saxonian UA did not come to a joint conclusion at all, Bavaria's UA published a fairly uncritical report and did not make major reform suggestions. It referred to the ongoing work based upon the recommendations by the *Bund-Länder-Kommission Rechtsextremismus* (see above) and the importance of better information sharing between security institutions.¹³⁵ With respect to the Bavarian *Verfassungsschutz* office, it proposed the re-creation of a unit specifically tackling far-right extremism.¹³⁶ This idea was indeed implemented.¹³⁷

Overall, it is evident that Germany's security institutions pay far-right extremism more attention than before the NSU scandal. A lot of groundwork had to be done in this respect, for example with respect to the collection of data concerning far-right perpetrators and group memberships. Observers bemoan the lack of a uniform procedure of monitoring right-wing violence in Germany.¹³⁸ The BMI and civil society organizations, such as the Amadeu-Antonio-Foundation and the Exit Initiative, remain in disagreement on figures of victims of far-right extremism, for example. Yet even the conservative figures produced by the BfV make it clear that Germany continues to have a serious problem with far-right extremism. For 2016, they counted 12,100 individuals from this side of the political spectrum who are willing to use

violence, and 1,600 atrocities.¹³⁹

Conclusion: a case of placebo scrutiny?

Special inquiries into intelligence are costly, time-consuming and examine contested issues of national security. They should therefore, arguably, only be initiated if they promise to deliver a product of high quality. This article has provided three core criteria by which to assess the quality of such commissions' performance: remit, rigor, and reception. The existing literature on intelligence accountability proposed little so far with respect to assessment criteria. In the post-9/11 era, however, we have seen a proliferation of this form of scrutiny, and it is therefore critical to systematically examine the performance of such inquiries.

The NSU case provided fascinating material for examining the value of the RRR framework. Taken together, the four inquiries have provided a wealth of information about the extent of far-right extremism in Germany and the attitude and work of state officials tackling related crimes. The joint reading of the findings provides a still fragmented, but more complete picture. For example, while the cases of racist and xenophobic attitudes within German security institutions outlined in *one* report would have shocked a lot of people, the fact that other inquiries found similar details helped to provide a sense of the scale of the problem.

Yet, not all inquiries have made a substantial contribution of knowledge. The analytical framework suggested that the precise admixture of remit, rigor and reception will determine the effectiveness of inquiry work. It has become clear that, concerning the four inquiries into the NSU scandal, the political will was particularly crucial. The lack of determination has indeed meant that Saxony's UA performed particularly poorly in many respects. The Bavarian

UA also clearly stopped itself from asking too uncomfortable questions and expressing major criticism, despite the fact that the authorities did not even connect the dots between the five murders which took place *within* Bavaria. Both inquiry exercises can therefore be described as placebo scrutiny. They have, on paper, investigated the matter and raised some issues while, in reality, their investigations have not achieved anything. This is most concerning with regard to the question of racial and xenophobic attitudes within state authorities.

In contrast, members of the inquiries of the Bundestag and the Thuringian parliament demonstrated remarkable stamina and pushed their investigations successfully at various points. Despite clear differences in detail, they both performed fairly strongly with respect to all three pillars of the analytical framework. Even these inquiries, however, struggled to shed much light on the most controversial issues, namely racism and the use of *V-Personen*. Their investigative capacity reached a clear limit in this respect and many questions remain unanswered.

A crucial reason for this is the high level of secrecy embraced by state authorities. Intelligence executives were reluctant and, sometimes, unwilling to reveal information which would have shed light on crucial points. In the case of handling paid informants, a particular concern is the protection of sources and methods. But the problem goes deeper. From the limited amount of information that has become available, it is evident that several authorities acted in an unethical, and even illegal, fashion by working too closely with certain *V-Personen* and by allowing them to occupy strategically important roles within the far-right movement. Though the inquiries of the Bundestag and Thuringia could provide only some details, their findings were severe enough to initiate further investigation.

Especially the recommendations of the Bundestag were implemented swiftly. More generally, however, the first wave of inquiries had some immediate and significant consequences. Apart from institutional reforms aimed at strengthening intelligence efforts at tackling far-right extremism, five intelligence directors had to step down from their posts.

While this article focused on the case of far-right extremism in Germany, the analytical framework and findings are not limited to its political system. Future research will have to examine to what extent the composition of the three RRR's – remit, rigor and reception – varies, depending on the particular context. The heightened security environment and ongoing debates about the means and limits of intelligence work means that there will be no shortage of comparative work in the future.

Regular scrutiny through parliamentary intelligence oversight committees was taking place across Germany throughout the period of the murders. Yet, in particular the case of Thuringia suggests that such committees relied to a large extent on the goodwill of the intelligence authorities in question. Where intelligence services were not providing the committee with information, the committee's mandate to oversee the intelligence service(s) became meaningless. This was clearly the case in Thuringia where Roewer, then head of the TLfV, simply failed to inform the Landtag's PKK to a satisfactory extent. The institution had gone 'topsy-turvy' under Roewer's leadership, according to PKK member Heiko Gentzel.¹⁴⁰ In cases like this, where permanent accountability forums perform inadequately, it is most significant that special inquiries conduct high-quality work. If they only provide a placebo - an illusion - of accountability, there is a severe risk that intelligence authorities escape control under a blanket of democracy.

Notes

¹ Intelligence is understood here to refer to intelligence services as well as intelligence-led police units.

² Examples include the ongoing Undercover Policing Inquiry in the UK, which is investigating undercover policing in England and Wales since 1968; the inquiry into the terrorist attacks of January 2015 in Paris, conducted by France's National Assembly; various inquiries into extraordinary renditions and torture; and the Bundestag's inquiry into the American National Security Agency (NSA) and related foreign intelligence activities in Germany (UCPI website at: <https://www.ucpi.org.uk>; Assemblée Nationale, *Rapport fait au nom de la commission d'enquête*; Deutscher Bundestag, *Beschlussempfehlung und Bericht des 1. Untersuchungsausschusses*. As a recent example of a UK-based inquiry into renditions see The Intelligence and Security Committee of Parliament, *Report on Detainee Mistreatment and Rendition*; and *ibid.*, *Detainee Mistreatment and Rendition*.

³ Kulish, "German Woman Charged in Neo-Nazi Crime Rampage."

⁴ Die Bundesregierung, "Rede von Bundeskanzlerin Angela Merkel."

⁵ Generalbundesanwalt Harald Range in interview, "Die NSU-Morde sind unser 11. September."

⁶ Wright, "Fit for purpose?", 176.

⁷ Phythian, "Intelligence and the liberal conscience", 502.

⁸ Lustgarten and Leigh, *In From the Cold*.

⁹ For an insightful discussion of the underdeveloped field of intelligence theory more broadly see the Special Issue 'Developing Intelligence Theory' in *Intelligence and National Security* (1 June 2018).

¹⁰ Bakir, "Political-intelligence elites, Strategic Political Communication and the press;" Hillebrand, "The role of news media in intelligence oversight;" Petersen and Tjalve, "Intelligence expertise in the age of information sharing."

¹¹ Hegemann, "Toward 'normal' politics?;" Braat, "Recurring Tensions between Secrecy and Democracy;" Bochel, Defty and Kirkpatrick, *Watching the Watchers*; Zegart, *Eyes on Spies*; Born, Johnson and Leigh (2005).

¹² For example, the British Parliament's Intelligence and Security Committee terminated their investigation into rendition and secret detention earlier this year, as the Government refused access to crucial witnesses, cf. Intelligence and Security Committee, *Report on Detainee Mistreatment and Rendition*, 1. For an insightful discussion on researching secret intelligence issues more broadly see Blakeley and Raphael, "Conducting effective research into state complicity in human rights abuses."

¹³ Aldrich and Richterova, "Ambient accountability", 1011.

¹⁴ For example, Johnson, "The Church Committee Investigation of 1975 and the Evolution of Modern Intelligence Accountability;" Rovner and Long, "The Perils of Shallow Theory: Intelligence Reform and the 9/11 Commission."

¹⁵ Aldrich, "Whitehall and the Iraq War;" Gill, "Inquiring into Dirty Wars."

¹⁶ Farson and Phythian, *Commissions of Inquiry and National Security*.

¹⁷ Farson and Phythian, "Toward the Comparative Study", 4.

¹⁸ At the federal level in Germany, this is regulated by Art. 44 of the German Basic Law.

¹⁹ Lustgarten and Leigh, 491-2.

²⁰ Lustgarten and Leigh, 492.

²¹ For a good discussion of the relationship between capacity and effectiveness in legislative oversight more broadly see Pelizzo and Stapenhurst, *Government Accountability and Legislative Oversight*, esp. their conclusions.

²² Farson and Phythian, "Toward the Comparative Study", 5.

²³ Born, Johnson and Leigh, 230.

²⁴ Born, Johnson and Leigh, 237.

²⁵ On the notion of a crisis of democracy, see Runciman, *How Democracy Ends*; Grayling, *Democracy and Its Crisis*.

²⁶ Farson and Phythian, "Toward the Comparative Study."

²⁷ An overview is available at: <https://www.verfassungsschutz.de/de/service/landesbehoerden>.

²⁸ For an insightful discussion of how 'normal' intelligence oversight through standing bodies manifests itself in Germany's parliamentary system, see Hegemann.

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- ²⁹ Waske, *Mehr Liaison als Kontrolle*, 259ff.
- ³⁰ Very little is known about the murder of Theodoros Boulgarides in Munich on 15 June 2015.
- ³¹ ARD, *Staatsversagen*.
- ³² Jaschke "Right-wing extremism and populism in contemporary Germany and Western Europe," 23.
- ³³ For a break-down of this 2016 figure see <https://www.verfassungsschutz.de/de/arbeitsfelder/af-rechtsextremismus/zahlen-und-fakten-rechtsextremismus/rechtsextremistisches-personenpotenzial-2016> .
- ³⁴ Braunthal, *Right-Wing Extremism in Contemporary Germany*, 1. For useful overviews on right-wing extremism in Germany see Koehler, *Right-Wing Terrorism in the 21st Century*; Kiess, Decker and Brähler, *German Perspectives on Right-Wing Extremism*; Della Porta, Caiani and Wagemann, *Mobilizing on the Extreme Right*.
- ³⁵ Neuerer, "Verfassungsschutz hat die AfD genau im Blick."
- ³⁶ Schellenberg, "Germany."
- ³⁷ Ridder, *Verfassung ohne Schutz*, 139.
- ³⁸ Ibid., 142.
- ³⁹ Bundesamt für Verfassungsschutz, *Gefahr eines bewaffneten Kampfes deutscher Rechtsextremisten*.
- ⁴⁰ Ziercke, "Eingangsstatement."
- ⁴¹ Wright, 176.
- ⁴² Deutscher Bundestag, *Beschlussempfehlung und Bericht des 2. Untersuchungsausschusses*, 4; 6-7. For the report of the Bund-Länder-Kommission see Bundesministerium des Innern, *Abschlussbericht der Bund-Länder-Kommission Rechtsextremismus*.
- ⁴³ Deutscher Bundestag, *Beschlussempfehlung und Bericht des 2. Untersuchungsausschusses*, 5-6.
- ⁴⁴ Thüringer Landtag, *Bericht des Untersuchungsausschusses 5/1*, 24ff.
- ⁴⁵ Thüringer Landtag, *Zwischenbericht des Untersuchungsausschusses 5/1*; Thüringer Landtag, *Bericht des Untersuchungsausschusses 5/1*.
- ⁴⁶ Thüringer Landtag, *Bericht des Untersuchungsausschusses 5/1*, 26ff.
- ⁴⁷ Sächsischer Landtag, *Abschlussbericht sowie abweichende Berichte des 3. Untersuchungsausschusses*; Bayerischer Landtag, *Schlussbericht des NSU Untersuchungsausschusses*.
- ⁴⁸ Jennerjahn, *Positionspapier zum abweichenden Votum*.
- ⁴⁹ Von Bebenburg, "Streit über NSU-Bericht." The report has not been released by the time this article was submitted.
- ⁵⁰ Gill, "Inquiries into Dirty Wars, 82.
- ⁵¹ Deutscher Bundestag, *Beschlussempfehlung und Bericht des 2. Untersuchungsausschusses*, 46; Thüringer Landtag, *Bericht des Untersuchungsausschusses 5/1*, 99-100.
- ⁵² Sächsischer Landtag, 29; Bayerischer Landtag, 27.
- ⁵³ Thüringer Landtag, *Bericht des Untersuchungsausschusses 5/1*, 688.
- ⁵⁴ Ibid., 1430ff.
- ⁵⁵ Ibid., 1531; author's interview with PKGr member, Berlin (January 14, 2014) [Interview C].
- ⁵⁶ Deutscher Bundestag, *Beschlussempfehlung und Bericht des 2. Untersuchungsausschusses*, 849.
- ⁵⁷ Thüringer Landtag, *Zwischenbericht des Untersuchungsausschusses 5/1*, 305ff.
- ⁵⁸ Thüringer Landtag, *Bericht des Untersuchungsausschusses 5/1*, 419.
- ⁵⁹ Gasser, *Untersuchungsbericht*, 10.
- ⁶⁰ Thüringer Landtag, *Bericht des Untersuchungsausschusses 5/1*, 1379.
- ⁶¹ Thüringer Landtag, *Bericht des Untersuchungsausschusses 5/1*, 1367.
- ⁶² Bittner, Denso and Staud, "Verbrecher und Versager."
- ⁶³ Bayerischer Landtag, 35.
- ⁶⁴ Ridder, 160-1.
- ⁶⁵ Thüringer Landtag, *Bericht des Untersuchungsausschusses 5/1*, 1582.
- ⁶⁶ Ibid., 1582, 1585.
- ⁶⁷ Ibid., 1585.
- ⁶⁸ Sächsischer Landtag, 90.
- ⁶⁹ Jennerjahn, "Keine Hoffnung auf eigene Aufklärungsinstrumente."
- ⁷⁰ See <https://www.gesetze-im-internet.de/puag/BJNR114210001.html> .
- ⁷¹ Deutscher Bundestag, *Beschlussempfehlung und Bericht des 2. Untersuchungsausschusses*, 52ff.
- ⁷² Bayerischer Landtag, 19ff; 27.
- ⁷³ Sächsischer Landtag, 15, 21.
- ⁷⁴ Deutscher Bundestag, *Beschlussempfehlung und Bericht des 2. Untersuchungsausschusses*, 106ff.
- ⁷⁵ Ibid., 987.

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- ⁷⁶ Ibid., 751.
- ⁷⁷ Jüttner, "Thüringer Neonazi-Ausschuss."
- ⁷⁸ Thüringer Landtag, *Bericht des Untersuchungsausschusses 5/1*, 521.
- ⁷⁹ Jüttner, "V-Leute im ,Thüringer Heimatschutz'."
- ⁸⁰ Deutscher Bundestag, *Beschlussempfehlung und Bericht des 2. Untersuchungsausschusses*, 854.
- ⁸¹ Bayerischer Landtag, 87.
- ⁸² Kleffner, "Wir sehen nur die Spitze des Eisbergs," 75.
- ⁸³ Ibid.
- ⁸⁴ Thüringer Landtag, *Bericht des Untersuchungsausschusses 5/1*, 1360.
- ⁸⁵ Ibid., 1360-1.
- ⁸⁶ Ibid., 1361.
- ⁸⁷ Ibid., 1340.
- ⁸⁸ Ibid., 1345.
- ⁸⁹ Spiegel Online, "Rechtsextremisten."
- ⁹⁰ Macpherson, *The Stephen Lawrence Inquiry*, point 6.34.
- ⁹¹ Deutscher Bundestag, *Beschlussempfehlung und Bericht des 2. Untersuchungsausschusses*, 855.
- ⁹² Ibid., 879.
- ⁹³ Ibid., 990ff.
- ⁹⁴ Ibid., 992.
- ⁹⁵ Bayerischer Landtag, 151.
- ⁹⁶ Thüringer Landtag, *Bericht des Untersuchungsausschusses 5/1*, 1630.
- ⁹⁷ Ibid., 1763.
- ⁹⁸ Gasser, 15.
- ⁹⁹ Ibid., 13-7.
- ¹⁰⁰ Deutscher Bundestag, *Beschlussempfehlung und Bericht des 2. Untersuchungsausschusses*, 259.
- ¹⁰¹ Thüringer Landtag, *Bericht des Untersuchungsausschusses 5/1*, 579.
- ¹⁰² Jüttner, „V-Leute im ,Thüringer Heimatschutz'."
- ¹⁰³ Gebauer, Roebel and Stark, "NSU-Sprengstofflieferant war V-Mann der Berliner Polizei"; Testimony of Witness P.S. in Deutscher Bundestag, *Stenografisches Protokoll*.
- ¹⁰⁴ Baumgärtner, "The Many Shortcomings of Germany's Neo-Nazi Terror Trial."
- ¹⁰⁵ Deutscher Bundestag, *Beschlussempfehlung und Bericht des 2. Untersuchungsausschusses*, 856.
- ¹⁰⁶ Ibid., 857 (emphasis added).
- ¹⁰⁷ Thüringischer Landtag, *Bericht des Untersuchungsausschusses 5/1*, 1391.
- ¹⁰⁸ Bayrischer Landtag, 134 (emphasis added).
- ¹⁰⁹ For the PKGr's annual reports see:
<https://www.bundestag.de/ausschuesse/ausschuesse18/gremien18/pkgr/berichte>
- ¹¹⁰ Author's interview with a member of the Bundestag UA, Berlin, December 4, 2013 [Interview A]; Interview C.
- ¹¹¹ Stern, "Ermittler entdecken tausende Dokumente."
- ¹¹² Interview A; Author's interview with two internal security experts of a political party represented on the Bundestag UA, Berlin, December 4, 2013 [Interview B]; Author's interview with a member of the Bundestag UA, Berlin, January 14, 2014) [Interview D].
- ¹¹³ Interview A.
- ¹¹⁴ Interviews A, B, D.
- ¹¹⁵ Tretbar, "NSU-Abschlussbericht."
- ¹¹⁶ Deutscher Bundestag, *Bericht der Bundesregierung über den Umsetzungsstand der Empfehlungen des 2. Untersuchungsausschusses*, 2.
- ¹¹⁷ Spiegel Online, "Abschlussbericht des NSU-Untersuchungsausschusses."
- ¹¹⁸ Fürstenau, "Kommentar: NSU-Aufklärung light."
- ¹¹⁹ Fürstenau, "Bundestag fordert weitere Reformen nach NSU-Mordserie."
- ¹²⁰ Interview A.
- ¹²¹ Interviews B, C.
- ¹²² Deutscher Bundestag, "NSU-II-Ausschuss." The second Bundestag UA is a striking example of how easily accountability can reach an impasse; cf. Deutscher Bundestag, *Beschlussempfehlung und Bericht des 1. Untersuchungsausschusses*. Further research will examine the second wave inquiries.
- ¹²³ Bundesministerium des Innern, *Abschlussbericht der Bund-Länder-Kommission*, 88.
- ¹²⁴ Bundesministerium des Innern, *Abschlussbericht der Bund-Länder-Kommission*, 19-20.

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- ¹²⁵ Deutscher Bundestag, *Beschlussempfehlung und Bericht des 2. Untersuchungsausschusses*, 864.
- ¹²⁶ Ibid., 865-67.
- ¹²⁷ Ibid., 864.
- ¹²⁸ Ibid., 864.
- ¹²⁹ Ibid., 865.
- ¹³⁰ Die Bundesregierung, *Deutschlands Zukunft gestalten*, 144.
- ¹³¹ Cremer, "Werden die Empfehlungen des NSU-Untersuchungsausschusses des Bundestags tatsächlich umgesetzt?", 2; Bundesministerium der Justiz und für Verbraucherschutz, Gesetz zur Umsetzung von Empfehlungen des NSU-Untersuchungsausschusses.
- ¹³² For example, Deutscher Bundestag, *Bericht der Bundesregierung über den Umsetzungsstand der Empfehlungen des 2. Untersuchungsausschusses*.
- ¹³³ Thüringer Landtag, *Bericht des Untersuchungsausschusses 5/1*, 1630.
- ¹³⁴ Ibid., 1632.
- ¹³⁵ Bayerischer Landtag, 149-50.
- ¹³⁶ Ibid., 151.
- ¹³⁷ Bayerisches Staatsministerium des Innern, für Bau und Verkehr, *Verfassungsschutzbericht 2016*, 96.
- ¹³⁸ Röpke, *Jahrbuch Rechte Gewalt*, 20.
- ¹³⁹ Bundesministerium des Innern, *Verfassungsschutzbericht 2016*, 23; 40.
- ¹⁴⁰ Bittner et. al., "Verbrecher und Versager."

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